

**INSTRUCTIONS FOR PRE-TRIAL STIPULATION FOR
PROCEEDINGS RE: CREDIT CARD USE UNDER 11 U.S.C. 523(a)(2)(A)**

1. A model Pre-Trial stipulation (“Model”) is attached re Credit Card Use under 11 U.S.C. 523(a)(2)(A). Please see the separate “Judges Forms & Instructions” for a model for all other Pre-Trial Stipulations.
2. Pre-Trial Stipulations for proceedings re: credit card use under 11 U.S.C. 523(a)(2)(A) must follow the Model.
3. Each Pre-Trial Stipulation must contain the following:
 - a. **Section I** - underlying issues of fact:
 - i. State whether each fact is contested or not contested. If the fact is contested, provide a brief statement of each party’s position and list proposed witnesses and exhibits.
 - b. **Section II** - issues of fact concerning intent:
 - i. List the elements of intent as stated in the model.
 - ii. Identify for each element or affirmative defense whether it is contested or not contested. If the element is contested:
 - Provide a brief statement of each party’s position.
 - List the witnesses, admissions, and exhibits that reasonably pertain to the contested element.
 - Note the elements established by pleading, admission, and stipulations.If the element is not contested, you only need to state that it is not contested.
 - c. **Section III** - plaintiff’s exhibits:
 - i. The parties must stipulate to the authenticity and admissibility of exhibits unless an objection is raised. (See Section V below.)
 - ii. Copies of each exhibit must be attached unless the exhibit is to be used for impeachment purposes only. Copies must be legible.
 - iii. Objections of exhibits:
 - Recite in a separately filed document any evidentiary objections and any response to said objections. See the model for filing and serving requirements. The court shall rule upon these objections at the Pre-trial Conference. Any objections that could have been raised at this stage of the proceeding and are not shall be deemed waived.
 - d. **Section IV** - defendant’s exhibits. Same instructions as Section III.
 - e. **Section V** - witnesses.
 - i. List the witnesses each party shall call to testify at trial.
 - ii. Summarize their intended testimony.
 - iii. Estimate the length of time for the direct and cross examination of each witness.
 - iv. See model for rebuttal testimony and Stipulation.

4. Witness to exclude evidence at trial must be filed and served before or concurrently with the pre-trial stipulation. Any response to the witness shall be filed and served two court days prior to the pre-trial conference.

SETTLEMENT INSTRUCTIONS

5. If the parties are considering or in the process of settling, the following instructions must be followed:

Unless a settlement is reached prior to the pre-trial conference date, a pre-trial stipulation must be timely filed and served. Failure to timely comply may result in sanctions.

A request for continuance of the pre-trial conference rarely will be granted if the reason for the request is that the “parties are discussing settlement” or “in the process of settling”.

6. If the parties *have settled*:

The pre-trial conference may be continued to allow for execution and filing the written settlement if the request for continuance contains a copy of the settlement or a substantial recitation of its terms.

The Request for Continuance must be filed at least two (2) court days prior to the pre-trial conference.

If the adversary is based on 11U.S.C. §523(c), then the settlement or stipulated judgment must contain an admission of liability under §523(a)(2), (4), (6) or (15) on behalf of the Defendant for it not to be treated as a reaffirmation agreement controlled by §524. If no admission is present, then the requirements of §524(c) and (d) must be followed.

TRIAL INSTRUCTIONS

7. Trial dates are firm and continuances at the parties’ request are rarely granted.

8. The court generally will contact counsel the week before the scheduled trial date to determine any revised trial estimate times. If the parties reach a settlement prior to trial, they must inform the court promptly at (213) 894-3635. A written stipulation and proposed order must be filed at least two (2) court days prior to the trial date. A written settlement may be subject to review as discussed above in paragraph 5.

9. Trial exhibits and deposition transcripts must be marked in advance in compliance with the local rules. Please prepare at least four (4) exhibit sets (for counsel, opposing counsel, the court, and the witnesses). If the exhibits are longer than ten (10) pages, they should be assembled in binders and tabbed (with exhibit numbers for the plaintiff and letters for the Defendant). An exhibit register must also be prepared in accordance with the local bankruptcy rules.

10. All trial briefs must be filed and served not less than four (4) court days in advance of the trial date, with conformed courtesy copies delivered to chambers.
11. Opening statements are welcome (but not usually necessary). Counsel should be prepared to complete closing argument as soon as the parties have rested. Post-trial briefs are appropriate only if ordered by the court.
12. Counsel are to instruct their witnesses to pause briefly before answering the question asked of them to allow opposing counsel to object. Objections are signaled to the court by standing prior to the witness's answer. In the event the witness begins the answer prior to counsel raising an objection, opposing counsel must wait until the witness is finished answering the questions before standing and raising the objection.

This is a model Pre-Trial stipulation. Please submit all stipulations for credit card use, under 11 U.S.C. 523 (a)(2)(A), in this format. Please note: Any text in *italics* is for instructional purposes only and should not be included in the Order.

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

In re

Debtor(s).

BK. No. LA
Adv. No. LA

Chapter

**PRETRIAL STIPULATION FOR
CLAIM FOR RELIEF CONCERNING
CREDIT CARD USE UNDER 11 U.S.C.
SECTION 523(a)(2)(A); ORDER
THEREON**

Plaintiff(s),
v.

Defendant(s).

DATE:
TIME:
**PLACE: 255 E. Temple Street
Courtroom 1368
Los Angeles, CA 90012**

_____, plaintiff in this adversary proceeding (“Plaintiff”), and
and _____, defendant(s) in this adversary proceeding
 (“Defendant”), SUBMIT THE FOLLOWING JOINT PRE-TRIAL ORDER in accordance
with Local Bankruptcy Rule 7016-1(b)(2).

I. UNDERLYING ISSUES OF FACT

A. Defendant applied to Plaintiff for credit on _____ 20__ (the
“Application”). A true, correct, and legible copy of the Application is Plaintiff’s Exhibit
#1.

(The following format is to be used for each fact stated below.)

Contested or Not Contested

(If contested, state contentions and list proposed witnesses and evidence that pertain to this issue).

Plaintiff:

Defendant:

B. Plaintiff agreed to provide credit to Defendant up to \$_____ through a revolving credit account for Defendant's use ("Account #1"). True, correct, and legible copies of the statements for Account #1 for the period of time at issue is Plaintiff's Exhibit #2.

C. Repeat B for all accounts at issue.

D. The nature (cash advance, purchase, etc.), date, and the amount of each charge at issue for Account #1 is accurately summarized in Plaintiff's Exhibit 3.

E. Repeat D for other accounts.

F. Defendant's bankruptcy case was commenced on _____, 20__ under Chapter ___ by the filing of a(n) (in)voluntary petition.

II. ISSUES OF FACT CONCERNING INTENT

A. Pursuant to *In re Eashai*, 87 F.3d 1082 (9th Cir. 1996), a claim under section 523(a)(2)(A) requires a showing of the following:

(1) The debtor made an affirmative representation to the person claiming fraud. Pursuant to *In re Eashai*, the mere use of the credit is an affirmative representation. (The following format is to be used for each factor listed below.) (If contested, each party must state their contentions and list proposed witness and exhibit pertaining to the issue).

Contested or Not Contested

(If contested, each party must state their contentions and list proposed witnesses and evidence that pertain to the issue).

Plaintiff:

Defendant:

(2) At the time of the representation the debtor knew of its falsity. Pursuant to *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996), the defendant either intentionally or with recklessness as to the truth or falsity, made representation that he intended to repay the debt.

Contested or Not Contested

Plaintiff:

Defendant:

(3) Pursuant to *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996), the debtor made the representations with the intention and purpose of deceiving the creditor.

Contested or Not Contested

Plaintiff:

Defendant:

(4) The creditor justifiably relied on the card holder's representation of intent to repay.

Contested or Not Contested

Plaintiff:

Defendant:

(5) The creditor sustained the alleged loss and damage as the proximate result of the representations having been made.

Contested or Not Contested

Plaintiff:

Defendant:

B. Pursuant to *In re Dougherty*, 84 B.R. 653 (B.A.P. 9th Cir. 1988), the following facts are pertinent in determining whether at the time Defendant made the charges at issue, Defendant did not intend to repay Plaintiff.

(1) The length of the time between the charges made and the filing of the bankruptcy was _____. *(If contested, state contentions and list proposed witnesses and evidence that pertain to this issue).*

(2) An attorney [was or was not] consulted concerning the filing of bankruptcy before the charges were made.

(3) The number of charges in issue is _____.

Contested or Not Contested

Plaintiff:

Defendant:

(4) The amount of the charges in issue is _____.

Contested or Not Contested

Plaintiff:

Defendant:

(5) The financial condition of the Defendant at the time the charges were made was _____.

Contested or Not Contested

Plaintiff:

Defendant:

(6) The charges [were or were not] above the credit limit of Account # _____ when made.

Contested or Not Contested

Plaintiff:

Defendant:

(7) The Defendant made multiple charges on the same day. [See Exhibit 3 and _____].

Contested or Not Contested

Plaintiff:

Defendant:

(8) At the time the charges in issue were made, Defendant's employment status was _____. [Specify monthly income and expenses].

Contested or Not Contested

Plaintiff:

Defendant:

(9) The Defendant's prospects for employment were _____.

Contested or Not Contested

Plaintiff:

Defendant:

(10) The financial sophistication of the Defendant was _____.

Contested or Not Contested

Plaintiff:

Defendant:

(11) There [was or was not] a sudden change in the Defendant's buying habits. The sudden change was _____.

Contested or Not Contested

Plaintiff:

Defendant:

1 (12) The purchases were made for [luxuries or necessities]. [Specify
2 nature of purchases].

3 **Contested or Not Contested**

4 **Plaintiff:**

5 **Defendant:**

6
7 **III. PLAINTIFF'S EXHIBITS**

8 Plaintiff's exhibits are attached to this order as Appendix I. The parties
9 stipulate that the exhibits provided in Appendix I to this order are authentic and
10 admissible. [Defendant contests the admissibility of the exhibits provided in the
11 concurrently filed "Motion to Exclude Evidence".] *Include the language in brackets*
12 *ONLY if there are objections to the admission of exhibits.*

13
14 **IV. DEFENDANT'S EXHIBITS**

15 Defendant's exhibits are attached to this order as Appendix 2. The parties
16 stipulate that the exhibits listed in Appendix 2 to this order are authentic and
17 admissible.

18 If there is a dispute as to the authenticity or admissibility of either party's
19 exhibits, the objecting party shall file and serve concurrently with this the Pre-Trial
20 stipulation any motion to exclude evidence with supporting memorandum of points
21 and authorities. Any response to the objection shall be filed and served two court days
22 prior to the pre-trial conference. All objections to the admission of exhibits shall be
23 resolved at the pre-trial conference. The failure to object to the admission of exhibits
24 listed in Appendices 1 and 2 shall be deemed a waiver of any objections.

V. WITNESSES

A. Plaintiff:

A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their intended testimony, and an estimate of the length of direct and cross examination is attached to this order as Appendix 3.

B. Defendant:

A list of the only witnesses Defendant shall call to testify at trial, a summary of their intended testimony, and an estimate of the length of direct and cross examination is attached to this order as Appendix 4.

C. Rebuttal Testimony

Plaintiff, who has the burden of establishing each element of its claim(s) for relief, will be the first to introduce evidence to prove the facts necessary to enable Plaintiff to recover. When Plaintiff rests, Defendant may then present evidence to contravene any of Plaintiff's claims or in support of any affirmative defenses which the Defendant has and included in this pre-trial order. After the close of Defendant's case, Plaintiff may present rebuttal witnesses only to counter evidence previously submitted by Defendant on issues not raised in Plaintiff's original presentation of its case.

STIPULATION

The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this order shall supersede the pleadings and govern the course of trial in this adversary proceeding, unless modified to prevent manifest injustice.

IT IS SO STIPULATED.

Dated: _____

Attorney for Plaintiff

IT IS SO STIPULATED.

Dated: _____

Attorney for Defendant

ORDER

IT IS SO ORDERED.

DATED:

VINCENT P. ZURZOLO
United States Bankruptcy Judge